

**REMARKS**

Claims 1-52 are all the claims pending in the application.

**I. Claim Rejections Under 35 U.S.C. § 103**

The Examiner rejected claims 1-52 under 35 U.S.C. § 103(a) as being unpatentable over Dhara, et al. (US 2004,0005042), hereinafter “Dhara,” in view of Gao, et al. (US 6,970,553), hereinafter “Gao,” in view of Wheeler, et al. (US 2003/0202642), hereinafter “Wheeler.”

**Claim 1**

The Applicant respectfully disagrees, and submits that neither Dhara, Gao nor Wheeler, taken alone or in combination, provide the necessary teaching, suggestion or motivation required for a rejection under 35 U.S.C. §103(a). Specifically, none of the cited references teach “a messaging initiator associated with said availability detector *for launching said messaging client* when said destination device is unavailable,” as recited in claim 1.

The Applicant first refers the Examiner to Applicant’s Specification, which states “if a destination device does not connect, messaging initiator 120 launches the originating device’s messaging client 130, so that the user may conveniently send a message to the unavailable device.” *Specification*, para. [0034]. The benefit of automatically launching the messaging client 130 alleviates the problem described in Applicant’s Background of the Invention, that:

If the caller attempts to place a regular call and the recipient does not answer, and the caller wishes to leave an SMS or MMS message, the caller must first hang up, and then manually access the SMS or MMS function on

his or her telephone. Accessing a message function on a cellular device often requires navigating through various menus on the device. The message and the target address must be manually input into the device and then transmitted. Confronted by this option, most callers currently prefer to end the call or leave a voice message and suffer its inconveniences.”

*Specification*, para. [0014]. As indicated by the referenced sections of the Applicant’s *Specification*, the invention embodied in the claims is designed to launch a messaging client on the originating communication device when a destination communication device is unavailable, so that the calling party can avoid the problems associated with deciding to send a message to the destination device using the complicated interface on a cellular device.

The Applicant submits that it is this “messaging initiator” that “launches said messaging client when said destination device is unavailable” (claim 1) that is not taught or suggested by any of the cited references. In the Office Action, the Examiner indicates that “the Office construes the phrase ‘launching the messaging client’ as sending a message to the client to display a pop-up window on the client device” (*Office Action*, p. 3), but as the Applicant’s *Specification* describes, the launching of the messaging client does not simply display a pop-up window, as “the communication device messaging client 130 opens with an input screen...displayed to the device user for user input of message content.” *Specification*, para. [0039]. The Applicant therefore disagrees with the Office’s interpretation of “launching the messaging client,” as the launching of the messaging client opens an input screen for input of a

message to the destination device and does not simply display a pop-up window on the originating communication device.

The Examiner cites to Dhara, para. [0023], as disclosing the messaging initiator of claim 1, but Dhara simply discloses where the “called party dialog instance 132 may send an instant message to the calling party cellular telephony device 102 to indicate the called party’s busy status, to give an alternative time to call, or to send another message.” *Dhara*, para. [0023]. Dhara fails to disclose where a messaging client is launched on the calling party cellular telephony device, as is described in claim 1, since Dhara only notifies the calling party cellular telephony device 102 of the unavailability of the called party telephony device 116.

Gao similarly fails to disclose the elements of claim 1, as Gao is directed simply to sending a *prompt* to the calling party telephone 101, not launching a messaging client at the calling party telephone 101. As described in Gao, “the prompt could notify the calling party that the called party computer 113 is accessible and *ask the calling party if they would like to chat with the called party.*” *Gao*, col. 5, lines 25-28 (emphasis added). Gao does not launch a messaging client or even the chat client described in Gao, as Gao only prompts the calling party to ask if the calling party would like to chat, in addition to describing a chat client rather than a messaging client. Gao is similarly limited in that the chat client requires that the called party be available for chat, while the messaging initiator of claim 1 launches the messaging client “when said destination device is unavailable” (claim 1), and is not dependent on the availability of the destination device.

Finally, Wheeler also fails to disclose a messaging initiator that launches a messaging client, as Wheeler only discloses “giving the originating party 10 control when the attempt to connect to the terminating party fails” so that the originating party can “determine the action to take for failure of connection.” *Wheeler*, para. [0016]. Wheeler provides the originating party with options of how to handle the call, but does not automatically launch a messaging client, as recited in claim 1.

To summarize, none of the references launch a messaging client so that a calling party can immediately draft a message to the unavailable called party when the destination device is unavailable. As neither Dhara, Gao nor Wheeler, taken alone or in combination, teach, suggest or provide any motivation for a messaging initiator for “launching said messaging client when said destination device is unavailable,” the Applicant submits that the rejection of claim 1 under 35 U.S.C. §103(a) should be withdrawn.

#### **Claims 2-21**

The Applicant further submits that claims 2-21 are allowable at least based on their dependency to claim 1.

#### **Claim 22**

The Applicant submits that neither Dhara, Gao nor Wheeler provide any teaching, suggestion or motivation for “a message sender associated with said availability detector for sending to said originating device a message comprising an address of said destination device,” as recited in claim 22. The Applicant refers the Examiner to the discussion above with regard to claim 1, and submits that Dhara, Gao and Wheeler all fail to disclose sending a message to the

originating device with the address of the destination device, as all of the cited references are only concerned with notifying the calling party that the destination device is unavailable without providing information, such as a message with the destination device address, that would aid the calling party in drafting a message to the unavailable destination device. For at least these reasons, the Applicant submits that the Examiner has failed to state a prima facie case of obviousness under 35 U.S.C. §103(a), and respectfully requests that the rejection of claim 22 be withdrawn.

**Claims 23-31**

The Applicant submits that claims 23-31 are allowable at least based on their dependency to claim 22.

**Claim 32**

The Applicant refers the Examiner to the arguments presented above with regard to claim 1, and submits that claim 32 is allowable for at least the same reasons. Specifically, neither Dhara, Gao nor Wheeler provide any teaching, suggestion or motivation for launching a messaging client of the originating communication device if the destination device is unavailable.

**Claims 33- 45**

The Applicant submits that claims 33-45 are allowable at least based on their dependency to claim 32.

**Claim 46**

The Applicant refers the Examiner to the arguments presented above with regard to claim 22, and submits that claim 46 is allowable for at least the same reasons. Specifically, neither Dhara, Gao nor Wheeler provide any teaching, suggestion or motivation for sending a message to the originating communication device with device addressing information if the destination device is unavailable.

**Claims 47-50**

The Applicant submits that claims 33-45 are allowable at least based on their dependency to claim 32.

**Claim 51**

The Applicant refers the Examiner to the arguments presented above with regard to claim 1, and submits that claim 51 is allowable for at least the same reasons. Specifically, neither Dhara, Gao nor Wheeler provide any teaching, suggestion or motivation for launching a messaging client of the originating communication device if the destination device is unavailable. Further, neither Dhara, Gao nor Wheeler provide any teaching, suggestion or motivation for generating a trigger signal, or launching the messaging client in response to the trigger signal, nor using the trigger signal to provide destination device addressing information to the messaging client.

**Claim 52**

The Applicant submits that claim 52 is allowable at least based on its dependency to claim 51.

## II. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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